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10/765,447	01/27/2004	Christian Bertin	P2972US	8583		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/765,447	BERTIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	OLUGBENGA O. IDOWU	2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 March 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 3/3/2009 have been fully considered but they are not persuasive.

The examiner would like to refer the applicant to arguments previously stated in past action. The examiner would also like to respond to the newly brought up arguments.

As previously stated, Horowitz covers the basis of the invention. In response to applicant's argument about the examiner simply combining Horowitz and Boyer and that the examiner is overlooking the "Nexus" between the recording and client or server based implementation. Although Horowitz is silent about being able to view the EPG on a server, Horowitz talks about the viewing device being a computer and web enabled device [0038], [0062]. Horowitz also talks about the broadcast network being Internet based [0044], [0048] and [0066]. This creates a frame work for the combination of Boyer with the teachings of Horowitz. From the above quoted portions of Horowitz it is clear that the examiner did not just combine a web based EPG as described in Boyer but that the examiner has carefully modified a system that already has the requirements for web based EPG by explicitly include a system that has a web based EPG. Also, in passing, applicant brought up the issue of Boyer not being about scheduling recording or handling of information pertaining to recording. As previously stated Boyer is not required to cover any recording or scheduling requirement.

In response to applicant's arguments about the address of the update server being stale, the way Horowitz is structured, the server is updated with information concerning time change or any kind of changes pertaining to a program. The user will always get up to date information about the program because the server it refers to will always have updated information {0032}, [0034- 0035].

In response to applicant's arguments with regards to the motivation for switching from a client based to a server based architecture which is based on applicants' analysis of the date. The fact that Horowitz has a 2002 date and Boyer a 1998 date does not affect the combination in anyway.

In response to applicant's arguments with regards to Shoff, applicant is reminded that Shoff was brought in for its teaching on providing a link that corresponds to a program. Horowitz already teaches the updates corresponding to the recording process [0035].

In response to applicant's arguments about the mechanism suggested by the examiner not being disclosed, would be manually implemented and suggest prior art being cumbersome. As it has been stated, Horowitz teaches the applicant's updating mechanism but just fails to teach the system being web based and the presence of a link to the update server (it discloses communicating with the update server on multiple occasions). With regards to the mechanism being manually implemented, Horowitz already teaches the system contacting the server based on user request and Shoff is brought in to explicitly show the presence of a link associated with a program.

Finally, with response to applicant's arguments concerning increasingly often updates. Horowitz, in [0034-0036], describes a system whereby updates are checked at different times as the beginning or ending time of a show approaches. Horowitz explains the operation of the loop by using two values, X and Y, with X being greater than Y. It uses an example of X being 15mins and checks for updates 15mins before the show starts and then at a value Y which is less than 15mins. If no changes are found, the

value of X is reduced and the whole process is repeated. Based on Horowitz, it can be stated that if the first check is done at the 15min mark, which equals checking once every 15mins and the second check is made at any amount of minutes less than 15 this is effectively increasing the frequency of checking for updates.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 6, 13– 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horowitz, publication number: US 2004/0078817 A1 in view of Shoff, patent number: US 6240 555B1 in further view of Boyer, patent number: US 7 269 838 B1. As per claims 1, 14-15 and 16, Horowitz teaches a method of recording audiovisual contents, the contents being broadcast according to a schedule, the method comprising:

Selecting, from an access terminal an audiovisual content to be recorded, the content being associated with a broadcast data and time predetermined by a content broadcaster (receiving a recording request, the request being associated with information such as program title and time, [0018], lines 9 – 13, [0042], lines 9 – 15,

STB having web surfing capabilities that allow to access information over the Internet [0062], lines 9 - 12) and

Supplying to the access terminal a record file of the selected audiovisual content in response to the selection and the scheduled date and time for broadcasting it (storing received recording request, [0027], lines 7 – 11, request contains date and time, [0018], lines 11-13, [0042], lines 9 - 15),

generating a request to update the record file, the request being sent by the terminal to the update server (updating based on requests from client device, [0051])

receiving by an access terminal the record file (receiving program information from the program guide, [0018], lines 9 - 13)

generating by the access terminal a request to update the record file (update request, [0018], lines 16 - 19), and

Horowitz does not teach wherein the record file further includes the address of an update server, a step of the access terminal sending the request to the address included in the record file.

In an analogous art, Shoff teaches wherein the record file further includes the address of an update server, a step of the access terminal sending the request to the address included in the record file (data fields corresponding to a program having link to server that has additional information on the specific program which can be accessed on request, Col. 6, lines 8 – 26, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Horowitz' conflict management system by including a link to server with additional information as described in Shoff's supplemental content system for the advantages of reducing the burden placed on processors for finding relevant information source.

The combination of Horowitz and Schoff do not teach wherein the selection is made on a presentation server.

In an analogous art, Boyer teaches wherein the selection is made on a presentation server (internet based EPG, col. 3, lines 1 - 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination of Horowitz and Schoff by including a system that allows remote access to the program guide as described in Boyer's internet based EPG system for the advantages of reducing the cost of the system and providing a central location for accessing the EPG.

As per claim 2, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, the method including a step of updating the record file in the event of modification of at least one of the date and time of the broadcast (Horowitz; updating record file, [0029]), or cancellation of broadcasting a selected audiovisual content, or substitution of some other audiovisual content.

As per claim 3, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, wherein the update request includes the address of the update server and the identification information of the audiovisual content (Horowitz; update information, [0051], lines 10 –17, Shoff: update link, Col. 6, lines 8 – 26, Fig. 3).

As per claim 4, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, wherein the request is an HTTP request (Shoff: update link, Col. 6, lines 8 – 26, Fig. 3).

As per claim 5, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, wherein the terminal sends the request to update the record file periodically up to the date and time scheduled for broadcasting the selected audiovisual content (Horowitz: regular updates, [0031], lines 7 - 15).

As per claim 6, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, wherein, during the selection step a single audiovisual content is selected, and wherein the terminal sends the request to update the record file increasingly often

as the date and time for recording the selected audiovisual content approaches (Horowitz: regular updates, [0031], lines 7 – 15, [0034 – 0037]).

As per claim 13, the combination of Horowitz, Shoff and Boyer teach a method according to claim 1 of recording audiovisual contents broadcast according to a schedule, wherein the request includes a reference of a user for statistical purposes (updating based on requests, [0051], lines 5 - 7).

4. Claims 7 - 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horowitz, publication number: US 2004/0078817 A1 in view of Shoff, patent number: US 6240 555B1 in view of Boyer, patent number: US 7 269 838 B1 in further view of Carden, Patent number: US 6 996 627 B1.

As per claims 7 - 9, the combination of Horowitz, Shoff and Boyer teach updating a record file based on changes in schedule.

The combination does not teach an identifier associated with an already recorded content.

In an analogous art, Carden teaches recording audiovisual contents broadcast according to a schedule, wherein the record file includes at least one field marked by a markup language element and defining, for a given audiovisual content in the same file, a content identifier associated with a content already recorded in the storage means of the access terminal (the program data structure 200 contains some of the program

information items 102 as well as identifies the location of other program information items 102, col. 6, lines 19 - 22).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the combination of Horowitz, Shoff and Boyer by including a way to track previously recorded items, as described in Carden's information updating system, for the advantages of saving storage space by not recording already recorded programs.

As per claim 10, the combination of Horowitz, Shoff and Boyer teach updating a record file based on changes in schedule.

The combination does not teach an XML schema.

In an analogous art, Carden teaches recording audiovisual contents broadcast according to a schedule, wherein the syntax of files exchanged between the access terminal and the server is defined by an unique data structure schema, in particular an XML schema (XML, col. 4, lines 9 -14).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the combination of Horowitz, Shoff and Boyer by including the use of XML, as described in Carden's information updating system, for the advantages of representing data structures, records and lists.

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horowitz, publication number: US 2004/0078817 A1 in view of Shoff, patent

number: US 6240 555B1 in view of Boyer, patent number: US 7 269 838 B1 in further view of Yamato, Publication #: 2002/0127000A1.

As per claim 11, the combination of Horowitz, Shoff and Boyer teach, a method of recording audiovisual contents broadcast according to a schedule (receiving a recording request, the request being associated with information such as program title and time, [0018], lines 9 – 13, [0042], lines 9 - 15), a step of receiving a record request file from which the access terminal generates a record-request request designed to be sent to a predetermined server for executing automatically the selection step (VOD, [0050])

The combination does not teach a preliminary step of selecting a plurality of contents having a common topic

In an analogous art, Yamato teaches the method including a preliminary step of selecting a plurality of contents having a common topic, (In addition, the device 100 searches the data of the EPG for user's favorite programs by using keywords or types which are established in advance by the user, [0169], lines 6 -10).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the combination of Horowitz, Shoff and Boyer by including the step of selecting contents with a common topic, as described in Yamato's recording device, for the advantages of updating only files that are of interest to the user and avoiding the clogging of the network by updating every available file.

As per claim 12, the combination of Horowitz, Shoff, Boyer and Yamato teach a method according to claim 11 of recording audiovisual contents broadcast according to a schedule, wherein the record request file includes the address of said predetermined server for generating the record-request request (Shoff: update link, Col. 6, lines 8 – 26, Fig. 3).

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUGBENGA O. IDOWU whose telephone number is (571)270-1450. The examiner can normally be reached on Monday to Friday, 7am - 5pm Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Pendleton can be reached on 571 272 7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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